

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION

00 AUG 14 1

PHYLLIS HOWELL,

Plaintiff,

v.

CONTINENTAL CASUALTY COMPANY,

Defendant.

}  
}  
}  
}  
}  
}  
}  
}  
}  
}

CIVIL ACTION NO.

00-AR-1926-M

U.S. DISTRICT COURT  
N.D. OF ALABAMA

*gw*

**ENTERED**

AUG 14 2000

MEMORANDUM OPINION

The court agrees with plaintiff, Phyllis Howell, that this is not an ERISA case. It is an action for breach of contract. However, the complaint, properly construed, involves an amount in controversy greater than \$75,000 and, because the citizenship of the parties is diverse, removal jurisdiction existed at the time of the removal, the critical moment for evaluating removal jurisdiction. The lesson taught by *Poore v. American-Amicable Life Insurance Company of Texas*, 2000 WL 1005070, \_\_\_ F.3d \_\_\_, (11th Cir. 2000), renders unavailing plaintiff's effort to limit her claim to less than \$75,000 after the removal. In other words, this court's *Bailey v. Wal-Mart*, 981 F. Supp. 1415 (N.D. Ala. 1997), has been wiped off the books, at least as far as the Eleventh Circuit is concerned.

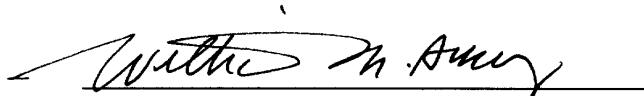
Because this is not an ERISA case, the motion by defendant,

9

Continental Casualty Company, to strike the jury demand and to dismiss state law claims, is inappropriate and will be denied.

Separate appropriate orders will be entered.

DONE this 14<sup>th</sup> day of August, 2000.

A handwritten signature in black ink, appearing to read "William M. Ackers, Jr.", is written over a horizontal line.

WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE